

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**3015 BAGBY, L.L.C.**  
Plaintiff,

**VS.**

**CERTAIN UNDERWRITERS AT  
LLOYD'S OF LONDON SUBSCRIBING  
TO POLICY NO. CLU51459; GULF  
COAST ADJUSTMENT SERVICE OF  
HOUSTON, INC. D/B/A GULF COAST  
CLAIMS SERVICES, MICHAEL SKYE,  
JOHNNY MICHALEK**  
Defendants.

[illegible]

**CIVIL ACTION NO. 4:19-cv-3704**

**DEFENDANT CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON'S  
NOTICE OF REMOVAL**

Defendant, Certain Underwriters at Lloyd's of London ("Underwriters") files this Notice of Removal pursuant to 28 U.S.C. §§1441 and 1446(a).<sup>1</sup> Defendant removes this action to the United States District Court for the Southern District of Texas, Houston Division, and in support thereof, respectfully asserts the following:

## I. INTRODUCTION AND PROCEDURAL HISTORY

1. This lawsuit stems from a property insurance dispute related to Policy No. CLU51459. On August 15, 2019, 3015 Bagby, LLC ("Plaintiff") filed its Original Petition in the 129<sup>th</sup> Judicial District Court of Harris County, Texas (Cause No. 2019-56700).<sup>2</sup> Plaintiff's Petition named Underwriters, Gulf Coast Adjustment Service of Houston, Inc. d/b/a Gulf Coast Claims Services ("Gulf Coast"), Michael Skye, and Johnny Michalek (collectively the "Defendants") as

<sup>1</sup> Plaintiff has been given notice of the filing of Underwriters' Notice of Removal. *See* Exhibit B.

<sup>2</sup> See Ex. A, Plaintiff's Original Petition.

defendants in the suit.<sup>3</sup>

2. Plaintiff's Petition asserts the following causes of action against the Defendants, namely: breach of contract, breach of duty of good faith and fair dealing, agency liability, bad faith, negligent misrepresentation, common law fraud, civil conspiracy, violations of Texas Deceptive Trade Practices – Consumer Protection Act, violations of the Texas Insurance Code and a declaratory judgment action.<sup>4</sup> Plaintiff's claims are based upon the Defendants' alleged acts and/or omissions related to the investigation and indemnity for water damage sustained at Plaintiff's property located at 3015 Bagby Street, Houston, Texas 77006.<sup>5</sup>

3. On August 27, 2019, Plaintiff served Gulf Coast and Johnny Michalek with its Original Petition. On September 3, 2019, Plaintiff served Underwriters and Michael Skye with its Original Petition.

4. All Defendants have filed an Answer to Plaintiff's Original Petition in state court.<sup>6</sup>

5. Counsel for the Defendants consent to the removal of this action pursuant to 28 U.S.C. § 1446(b)(2)(A).

## **II.**

### **TIMING OF REMOVAL**

6. Underwriters were served with Plaintiff's Original Petition on September 3, 2019. This Notice of Removal is being filed within thirty (30) days of service and is therefore, timely pursuant to 28 U.S.C. § 1446(b)(1).

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<sup>3</sup> *See id.*

<sup>4</sup> *Id.* at ¶¶ 31-100.

<sup>5</sup> *Id.*

<sup>6</sup> *See* Ex. C, Defendants Gulf Coast, Michael Skye, and Johnny Michalek's Original Answer; *see also* Ex. D, Defendant Underwriters' Original Answer.

**III.**  
**VENUE**

7. Under 28 U.S.C. §1441(a) and 1446(a), venue is proper in the United States District Court for the Southern District of Texas – Houston Division because the court occupies the district and division in which Plaintiff's lawsuit is filed.

**IV.**  
**BASES FOR REMOVAL**

8. Removal is proper on the following grounds:

A. Complete Diversity Between the Parties

Federal jurisdiction is based upon complete diversity of citizenship in accordance with 28 U.S.C. § 1332. There is complete diversity among the parties at the time of removal, as Underwriters have accepted the liability of the alleged acts and/or omissions of its agents, Defendants, Gulf Coast, Michael Skye, and Johnny Michalek. *See* TEX. INS. CODE §542A.006. Gulf Coast, Michael Skye, and Johnny Michalek were improperly joined as defendants in the state court suit. Pursuant to TEX. INS. CODE §542A.006, the only proper parties to this lawsuit are Plaintiff and Underwriters, which make removal to federal court proper pursuant to 28 U.S.C. § 1332(a).

Plaintiff's Petition states that Plaintiff is a Texas limited liability company whose principal place of business is located at 3015 Bagby Street, Houston, Texas 77006. Defendant Underwriters are now, and were at the time of the state court action commenced, citizens of the United Kingdom and their principal places of business was and is in the United Kingdom.

B. The Amount in Controversy Exceeds \$75,000

The amount in controversy exceeds \$75,000, excluding interest and costs. *See* 28 U.S.C. §1332(a). Plaintiff's Petition states that Plaintiff seeks monetary relief of more than \$100,000.00,

but not in excess of \$200,000.00. Accordingly, all requirements are met for removal under 28 U.S.C. §1332(a) and §1446(b).<sup>7</sup>

9. Copies of the pleadings and other filings in the state court suit are attached to this notice as required by 28 U.S.C. §1446(a).<sup>8</sup>

10. Underwriters will promptly serve a copy of this notice of removal on counsel for Plaintiff and Defendants and will file a copy with the clerk of the Harris County District Court where the suit has been pending.

**V.**  
**JURY DEMAND**

11. Plaintiff demanded a jury trial in the state court suit.<sup>9</sup>

**VI.**  
**DOCUMENTS FILED WITH THIS NOTICE**

12. Pursuant to Local Rule 81, the following documents are attached to this Notice of Removal.

- Exhibit A Plaintiff's Original Petition;
- Exhibit B Defendant Underwriters' Notice of Filing of Removal filed in state court;
- Exhibit C Defendants Gulf Coast, Michael Skye, and Johnny Michalek's Original Answer to Plaintiff's Original Petition;
- Exhibit D Defendant Underwriters' Original Answer to Plaintiff's Original Petition;
- Exhibit E Affidavit of Service to Defendant Johnny Michalek;
- Exhibit F Affidavit of Service to Defendant Michael Skye;
- Exhibit G Affidavit of Service to Defendant Gulf Coast;

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<sup>7</sup> See Ex. A, Plaintiff's Original Petition at ¶ 103.

<sup>8</sup> See Exs. A, C, D and I.

<sup>9</sup> See Ex. A, Plaintiff's Original Petition at ¶ 111.

- Exhibit H A list of all counsel of record, including address, telephone numbers, and parties represented in the state court case;
- Exhibit I An index of matters being filed;
- Exhibit J Docket sheet from the state court; and
- Exhibit K Date Stamped Citation from Defendant Underwriters' Registered Agent.<sup>10</sup>

**VII.**  
**PRAYER**

**WHEREFORE**, Defendant Certain Underwriters at Lloyd's of London remove this case from the 129<sup>th</sup> Judicial District Court, Harris County, Texas to this Court.

Respectfully submitted,

**HOLMAN FENWICK WILLAN USA LLP**

/s/ Gerard J. Kimmitt, II

**Gerard J. Kimmitt, II**

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**ATTORNEY-IN-CHARGE FOR CERTAIN  
UNDERWRITERS AT LLOYD'S OF LONDON**

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<sup>10</sup> See Ex. K. Underwriters' Registered Agent Mendes & Mount LLP were served on September 3, 2019. A copy of the executed Affidavit of Service for Underwriters has yet to be filed with the Court.

**CERTIFICATE OF SERVICE**

A true and correct copy of Defendants' Notice of Removal was filed electronically with the United States District Court for the Southern District of Texas – Houston Division, with notice served via e-file and facsimile on this the 27th day of September, 2019:

George B. Murr  
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Thomas Ryan Lemens  
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4101 Washington Avenue  
Houston, Texas 77007

/s/ Gerard J. Kimmitt, II  
Gerard J. Kimmitt, II